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SUMMARY RECORD OF THE 2234th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 22 October 2004, at 3 p.m.

Chairperson: Mr. AMOR

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Initial and second periodic reports of Benin (continued) (CCPR/C/BEN/2004/1 and Add.1; CCPR/C/82/L/BEN/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Benin resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to respond to questions 27 to 30 of the list of issues (CCPR/C/82/L/BEN/Rev.1).

3. Ms. ADJANONHOUN (Benin) said, in reply to question 27, that trade unions enjoyed freedom of association under the Act of 26 February 1986 relating to the civil service staff regulations, the Act of 11 December 1990 relating to the Constitution of Benin, and ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which had been ratified by Benin.

4. In accordance with the principles enshrined in those instruments, workers and employers enjoyed the right to organize in order to defend their interests or to join federations or confederations of their own choosing. Interference by the public authorities with the aim of restricting or impeding the lawful exercise of that right was prohibited. Trade union premises were inviolable. The State guaranteed freedom of assembly, expression and association. Article 31 of the Constitution and article 48 of the civil service staff regulations guaranteed the right to strike. Pursuant to Constitutional Court decision No. 33-94, Parliament was prohibited from suspending or abolishing the right to strike.

5. The Act of 21 June 2002 regulating the exercise of the right to strike stipulated that labour disputes in all branches should be settled through negotiations with representatives of the State in the case of civil servants, and in accordance with the provisions of articles 252 et seq. of the Labour Code in the case of employees subject to that Code. Regardless of the outcome, a record of the negotiations was prepared within 48 hours. In the event of failure, three days' notice of a work stoppage, stating the reasons and giving the time, date, place and duration of the strike, must be given to the competent authorities. Such notice did not prevent the continuation of negotiations and could be reduced to 24 hours in the event of a serious breach of workers' rights. In the case of civil servants, arbitration by the National Civil Service Board or a mediator was required.

6. During a strike, civil servants or other officials employed by establishments providing a service whose total suspension would seriously harm national security or public health were required to maintain a minimum service, failing which the authorities would order a resumption of work. The number of persons thus required to resume work could not exceed 20 per cent of total staff and could not include trade union officials. Work orders were notified through administrative channels and the safety of the staff concerned was ensured by the authority issuing the order. Persons refusing an order were subject to first or second-degree disciplinary sanctions under the civil service regulations or the Labour Code.

7. Perpetrators of or accomplices in acts of violence or assault to coerce workers to participate or refrain from participating in a work stoppage were punishable by law. Any strike lasting more than one day entailed a proportionate reduction in pay unless it was called to protest against violations of the universally recognized fundamental freedoms and rights of trade unions or against non-payment of established workers' entitlements. In practice, the State had only rarely imposed a proportionate reduction in pay.

8. Ms. VIEYRA née d'ALMEIDA (Benin), replying to question 28, said that child trafficking, which had formerly involved the placement of children with a third party as an act of mutual assistance or family or community solidarity, had now become a widespread immoral practice in which children's basic human rights were violated. With a view to preventing and punishing such trafficking, the authorities had organized over 250 social awareness sessions throughout the country on the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, and over 50 workshops for teachers, police officers, NGOs, the clergy, health-care and social workers, mayors and other administrators, judges, lawyers, broadcasters and others. Awareness campaigns had also been organized among taxi and bus drivers, and people living close to the borders with Nigeria and Togo had been encouraged to report traffickers to the authorities. Anti-trafficking committees had been set up in 1,093 villages. A national commission and departmental commissions on children's rights had been established, and a Committee on Children in Difficulty, composed of representatives of the authorities, NGOs and associations, monitored developments in child protection. Schools had been provided with teaching aids on the problem of trafficking. A Beninese Children's Day had been instituted, and a Personal and Family Code had been adopted. An agreement had been concluded with Nigeria on cross-boundary movements of children.

9. The provisions of the Criminal Code were applicable to traffickers and a bill containing specific penalties for child trafficking was being drafted.

10. To eliminate child labour and the economic exploitation of children, Benin was implementing: ILO's Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182); the Order of 17 April 1973 amending the provisions of the Criminal Code pertaining to trafficking in persons and abduction of minors; the Decree of 24 June 1995 concerning the issue of permits to leave the country to minors under the age of 18; the Act of 5 July 1961 concerning travel by minors under the age of 18 outside the territory of the Republic of Dahomey; the Order of 7 November 2000 specifying categories of prohibited work and enterprises prohibited from employing women, children and adolescents; the Act of 27 January 1998 on the Labour Code containing provisions governing the employment of women and children; the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime; the African Charter on the Rights and Welfare of the Child; and the Act of 14 June 2004 relating to the Personal and Family Code.

11. Mr. SOSSA (Benin) said that there had been more publicity for child trafficking in recent years not because of a major increase in the phenomenon, but because of greater vigilance on the country's borders and success in bringing perpetrators to justice.

12. Mr. ALIA (Benin), replying to question 29, said that Constitutional Court decision No. 01-083 had declared articles 2, 7, 10, 40 and 45 of the Charter of Political Parties unconstitutional because they: undermined article 5 of the Constitution, which stipulated, inter alia, that political parties should be formed and operate freely and should respect the principles of national sovereignty, democracy and territorial integrity; violated the principles of democratic pluralism and freedom of association; excluded local elections; authorized political parties to organize and supervise national and local elections; and instituted a single party contrary to the Constitution. The Charter had been amended in the light of the Court's decision and now fully guaranteed basic human rights and freedoms in accordance with article 25 of the Covenant. It provided for universal, equal and secret suffrage for all Beninese of both sexes who had attained 18 years of age. Implementing decrees had already been adopted.

13. Turning to question 30, he said that laws and treaties were disseminated through the Journal Officiel, the media and rural radio information campaigns. Human rights were promoted through information campaigns, and human rights training and education. The public was informed of the submission of human rights reports through a press release. The initial report and the Committee's concluding observations would be publicized in Benin's various national languages by the media and, in particular, the rural radio network.

14. Mr. SOSSA (Benin) said, in reply to a question raised by a Committee member at an earlier meeting, that the "Petit Palais" had been a place of torture under the previous regime but was no longer used for such purposes.

15. In reply to another question, he said that the exception to article 3 of the Act concerning female genital mutilation related only to surgery ordered by a doctor for health reasons.

16. Sir Nigel RODLEY said he had been pleased to hear at the previous meeting that the Beninese Government was seeking a country of asylum for the 11 former Togolese soldiers with refugee status and that they would not be extradited. However, he would welcome additional information about their conditions of detention during the intervening period.

17. Ms. CHANET, while commending Benin for having agreed to a visit by representatives of the International Federation for Human Rights (FIDH), said she found the organization's report on prison conditions disturbing, especially its description of sanitary conditions and the lack of special care for minors. Women prisoners were denied access to the recreation yard and prison market in one prison because they were in the men's section. She failed to see why alternative arrangements could not be made to address such discrimination. She suggested reviewing prison policy to provide for alternatives to imprisonment in the case of first or petty offenders in the form of a semi-custodial regime or community work in order to alleviate overcrowding and reduce racketeering and violence among inmates.

18. While persons in police custody theoretically enjoyed the right of access to a lawyer and a doctor, they were reportedly often denied that right in practice and the eight-day maximum period of custody, which was in any case far too long, was frequently exceeded. She asked whether such breaches of the rules were the norm or an exception.

19. She had been surprised to hear that the delegation considered a five-year prison sentence for libel or defamation to be in keeping with article 19 of the Covenant. Any restrictions on freedom of expression should be consistent with the principle of proportionality and a prison sentence of that duration certainly was not. She asked whether anybody was currently being held for such offences.

20. She was pleased to note that article 40 of the Constitution required the State to disseminate information about human rights instruments. She would welcome more details of how such information was presented by the media, and especially local radio stations.

21. Mr. BHAGWATI said it was difficult to understand why prisoners on death row had not had their sentences commuted to life imprisonment, given that there had been no executions since 1991. The constant fear of execution suffered by prisoners facing the death penalty constituted cruel treatment, and they reportedly endured harsher conditions than other prisoners.

22. It would be useful to learn under what circumstances legal aid was granted, whether it was government-funded, and whether lawyers who provided legal aid were paid for their work. The reporting State should provide statistics on legal aid for the previous three years, and indicate which body assigned counsel and what type of cases qualified for legal aid. The differences between legal aid and assigned counsel should be clarified.

23. Mr. LALLAH, supported by Mr. Ando, asked whether Covenant principles had been taken into consideration when the Acts of 30 June 1960 and 20 August 1997 had been adopted, since that legislation appeared to be inconsistent with article 19 of the Covenant. It was particularly difficult to understand why private rights should be protected under criminal law.

24. In connection with the right to peaceful assembly, he failed to understand why, in the case of Mr. Abbou, the defendant had been refused the right to demonstrate against petrol price increases on 4 March 2000, on the grounds that he was a party leader. The refusal of the right of the Renaissance du Bénin opposition party to demonstrate on 25 April 2002, on the grounds that the dispute was between members of a political party, also appeared to violate the rights protected under article 19.

25. With reference to freedom of association, it would be useful to know whether the State decided on the legality of a strike before deciding to withhold the salaries of those taking part in it.

26. He requested additional information on measures adopted to give effect to article 40 of the Constitution on human rights training, and the budget allocation for such training.

27. Mr. ANDO asked why the statistics in paragraphs 84, 87 and 88 of document CCPR/C/BEN/2004/1/Add.1 were not as specific as those that had been given in the delegation's answers to the list of issues.

28. He enquired why no cases concerning freedom of opinion or freedom of expression had been brought before the Constitutional Court.

29. With reference to paragraph 101 of the addendum to the report, he asked for details of any meetings that had been banned on the grounds cited. Additional data on the two Constitutional Court rulings concerning freedom of assembly (para. 102) and the three cases relating to freedom of association (para. 113) should be provided. He asked whether all State officials, particularly primary and secondary schoolteachers, had the right to strike.

30. Mr. SOLARI YRIGOYEN said that he would like to have further details of the practice of lynching and "mob justice" for suspected thieves and "sex thieves". In particular, the State party should give a full account of the measures taken to prevent such actions.

31. He agreed with Mr. Bhagwati that death penalties could be commuted to life imprisonment, and said that the Government should consider abolishing the death penalty. In the light of NGO reports on the extremely harsh conditions suffered by prisoners on death row, the reporting State should provide additional information on the situation of those prisoners. He added his voice to those who had expressed concern about general prison conditions in Benin.

32. It would be useful to learn whether cannibalism was still prevalent, given that it was one of the offences that carried the death penalty.

33. Sir Nigel RODLEY said that the maximum period during which people could be held in pre-trial detention, from the moment of apprehension until being brought before a judge, should be clarified. The State party should confirm whether a person in pre-trial detention had access to a lawyer, and whether it was true that the State did not assign defence counsel to detainees until the trial stage. It would be useful to know what specific provisions on access to a lawyer would be included in the revised Code of Criminal Procedure.

34. Given that the Raid police unit did not have the powers of the judicial police, including the power of detention, it was difficult to understand why it was detaining people, such as Mr. Ernest Laiou. In the light of the inspections of police detention premises that were apparently made, he also failed to understand why there had been consistent allegations of torture and ill-treatment of people held in Raid facilities. Additional information should be provided on those allegations and the powers of the Raid unit.

35. Mr. CASTILLERO HOYOS asked what measures the State party had taken to protect refugees from Togo. It would also be useful to have a full account of the allegations of ill-treatment of Nigerian refugees by the police, and of the refusal to allow 150 people from Liberia, including asylum-seekers, to enter Benin in June 2002. What measures had been taken in those cases and what would be done to prevent such incidents in the future?

36. In the light of allegations of corruption, arbitrary judgements and ineffectiveness in the judicial system, he asked whether the State party had acceded to the main international instruments that had a bearing on corruption. If so, it would be interesting to learn whether the ensuing legislation had been enforced and what the results had been.

37. In relation to the statistics on religious affiliation, he wondered why there appeared to be no agnostics or atheists listed. He would be interested to learn whether the Government had considered the possibility of decriminalizing the offence of defamation. With regard to the right

of association, he asked the delegation to comment on reports that on 7 February 2004 the police had arrested and injured students protesting against living and working conditions and the shortage of grants at Abomey-Calavi university. He would welcome more information on the restrictions on the right to strike contained in Act No. 6,914 of 1969.

38. Recent elections were perceived by the international community to have been characterized by several irregularities. What measures were being taken to prevent such irregularities in the 2005 elections?

39. According to the Committee's sources, a number of Benin's indigenous languages were disappearing. What measures were being taken or considered to prevent that from happening?

The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.

40. Mr. SOSSA (Benin) said that the Togolese refugees referred to in question 15 had been held in Cotonou since February out of concern that they might be abducted, as had happened in the past since the national borders were not sealed. Those concerned had not objected to being held there. The Beninese authorities were anxious that they should leave for another destination, and the relevant formalities were being finalized. They were not in prison, but were simply being held for their own safety. None of them had suffered any serious illnesses.

41. While the situation in the prisons was a matter for concern, it should not be exaggerated. The prisons were open to a number of foreign NGOs, and Prisonniers sans Frontières and Penal Reform International were active in that area. Their reports on the situation in Benin's prisons would be broadcast internationally. Once authorization had been requested, various groups could visit prisons. It was true that the Government did not have the necessary resources to maintain the prisons, but the situation was not as bad as had been reported. The Committee should consult some of the international NGOs which were familiar with the prison system in his country. No prisoners were kept permanently in their cells, and during the day they were allowed into the courtyard where a market was held. There was no communication between juveniles and adults, or women and men. The draft Criminal Code also provided for alternatives to prison sentences, such as community service.

42. Regarding the duration of pre-trial detention, according to the Constitution a suspect could not be detained for longer than 48 hours without the authorization of a judge. Detention could only be extended in cases provided for by the law and could not exceed eight days. However, as the Code of Criminal Procedure provided only for the authorization of a further 48 hours in addition to the original 48, there had been no cases of normal custody lasting eight days. The maximum authorized duration of detention was four days, and any person responsible for cases where that limit had been exceeded was punished.

43. As to freedom of the press, there were currently no prison sentences being served for offences against the legislation on the press. In a recent defamation case, the editor of a publication who had not appeared in court had been sentenced in his absence. There was a high level of freedom in that area and journalists were not systematically prosecuted, although many did not take sufficient care to ensure the accuracy of their information.

44. With regard to abolition of the death penalty and conditions of life imprisonment, his delegation had taken note of Mr. Bhagwati's suggestions. Contrary to certain reports, the prisoners concerned were not held in very small cells and were not locked up permanently.

45. As to the right of association, there were approximately 150 political parties in his country. The cases mentioned by the Committee related to protests organized by parties on the public highway. Such demonstrations were not prohibited, but authorization was required as they caused disturbances and blocked traffic. Authorization was only required for demonstrations, not for ordinary meetings.

46. In response to Mr. Castillero Hoyos, he said that his delegation would provide information on the Nigerian refugees in due course.

47. It was true that cases of corruption had been recorded, and judges had been convicted. Under the law, once a citizen had made a complaint of judicial corruption, a judicial inspector was sent to check the facts. If there appeared to be grounds for a case, the Supreme Council of the Judiciary organized a thorough investigation and a hearing. In addition to those sanctioned for the crimes of misappropriation and corruption, a number of judges had been sanctioned for lesser offences. The sanctions were imposed by the Supreme Council of the Judiciary.

48. The students reported to have been arrested and injured by the police had vandalized university property, which constituted a crime. When the police had looked for the perpetrators, the students had organized protests. There was no problem with students protesting, but the police had simply been enforcing the provisions of the law.

49. The right to strike was not restricted in Benin. Under the law governing that right, the health services must ensure minimum service at all times, but provided that was done, staff were free to strike. The freedom to strike was illustrated by the recent judges' strike, which had prompted debate on the question whether they should also be obliged to provide a minimum service during the strike. A judge's authorization was in fact required in order to detain suspects longer than 48 hours. Under the law, if workers were on strike their wages must be withheld, although that did not necessarily happen in practice. The delegation would provide the Committee with a copy of the law for further information.

50. If a lynching occurred, the perpetrators were arrested and prosecuted. Efforts to combat lynching seemed to have been successful; while there were still occasional incidents, the practice was no longer widespread.

51. With regard to religious affiliation, in general anyone who was not Christian or Muslim was assumed to practise a traditional religion. However, according to a United Nations Population Fund document, which had not been available at the time of drafting of the report, 6.5 per cent of the population did not practise any religion.

52. As to irregularities in elections, Benin had been the first country in Africa to establish a national independent electoral commission, which organized elections independently of the Government, unlike in many countries, where the Ministry of the Interior organized the elections. The commission was composed of representatives of all the main groups in society,

including judges and human rights organizations. Many foreign observers were also present during the elections. There were occasionally disputes, as irregularities did occur, but those cases were always followed up, and the Constitutional Court, which was responsible for announcing the results, had annulled votes on a number of occasions. Various organizations monitored the elections and it could not be claimed that elections were rigged.

53. In relation to corruption, Benin had ratified the United Nations Convention on Corruption, and the United Nations Convention against Transnational Organized Crime. The publication of the Criminal Code had been delayed to include the provisions of those conventions.

54. That cannibalism was mentioned in the Criminal Code was simply due to the fact that that Code had been inherited from the colonial period and had applied to all the former French colonies. There had been no reported cases of cannibalism in his country.

55. Sir Nigel RODLEY said that specific examples should be provided of cases from the past three years in which sanctions had been imposed on persons responsible for prolonged detention, torture, or inhuman or degrading treatment or punishment. Information should be given on how many such cases there had been, what abuses had been committed and what the nature of the sanctions had been.

56. Mr. BHAGWATI requested further information on the State-funded legal aid programme. He asked under what circumstances legal aid was granted and, whether there was an authoritative body that regulated the granting of legal aid. Regarding assigned counsel, he wished to know in what types of cases assigned lawyers were used, and who was responsible for assigning particular lawyers to particular cases.

57. Mr. SOSSA (Benin) said that lawyers were assigned only to criminal cases that came before the assize court, in situations when the defendant did not have the financial means to engage a lawyer of his or her choice. Lawyers were assigned by the president of the assize court, who was an independent judge. Although in non-criminal cases needy persons were not eligible for legal aid, they were not obliged to use the services of a lawyer and were entitled to represent themselves in court. There were often cases of applications for garnishee orders nisi, in which applicants represented themselves. Self-representation in court did not jeopardize an applicant's chances of winning his case.

58. Turning to Sir Nigel Rodley's request for information on sanctions against the perpetrators of abusive detention and torture, he said written replies would be sent to the Committee in due course. There were currently two police officers in custody for offences involving physical violence against detainees.

59. The CHAIRPERSON thanked the delegation of Benin for its responses to the Committee's questions. The State party's initial and second periodic reports contained a considerable amount of information on legal provisions but were lacking in details on the effects of those provisions. Considerable efforts had been made by the Government since the 1990s to develop domestic law and institutions to encourage equality, and the drafting of the new Criminal Code and Code of Criminal Procedure was particularly commendable. It was

necessary to strike a balance between legal provisions and the social situation: although it was important that citizens were legally guaranteed the right to address the Constitutional Court, the high level of illiteracy in Benin meant that very few people had the capacity to exercise that right. Efforts must be made to improve the economic and social situation in order to enable citizens to exercise their rights fully.

60. Women still held a secondary position in the Beninese social hierarchy, and female genital mutilation was considered to be a social necessity. Polygamy was common, and although only monogamous marriages were recognized by law, polygamous marriages were not prohibited or classified as punishable offences. Under the Covenant, polygamy was considered to be a violation of women's dignity. There had been reported cases of infanticide due to social traditions, such as the burial of babies whose mothers had died during or shortly after childbirth. He asked whether such practices were prohibited by law, since they were violations of the right to life, and whether traditional culture could overrule the law.

61. Certain traditional leaders, such as the Kings of Benin, still had almost unlimited authority over the social and political lives of their subjects. The Committee could only assess the gravity of those situations if it knew the extent to which such traditions were entrenched in the national culture. The weight of social tradition meant that certain people created their own justice, and measures should be taken by the State to address that situation through legal sanctions. Human rights should be integrated into the national culture and harmful traditional practices changed through public education. Although much remained to be done, Benin had made progress through the introduction of new legislation and considerable political change.

62. Although many legal instruments were published in the Journal Officiel, international treaties were not. The State must increase its efforts to disseminate information on human rights in order to raise public awareness. Many institutions, NGOs and the NGO Institute for Human Rights and the Promotion of Democracy had taken measures to publicize human rights, but the Government must ensure the publication and dissemination of the text of the Covenant.

63. Certain rights, such as freedom of the press, the right to freedom of association and the right to a fair trial, were given limited protection in Beninese legislation, and he asked how restrictive the limits were. Although torture was prohibited by law, certain cases appeared to have been overlooked, and more universal enforcement of the law should be ensured. Conditions in prisons and other detention facilities must be improved by providing sufficient food for prisoners, who currently received only one meal a day, and ensuring adequate medical examinations and treatment.

64. The progress made so far in Benin deserved respect, and he hoped that the country would continue to develop socially and culturally. The Committee had noted the good will of the Government, whom it encouraged in its efforts to further promote human rights.

65. Mr. SOSSA (Benin) thanked the Committee for its comments and questions, of which his delegation had taken due note. The Government would certainly endeavour to ensure further progress in the sphere of human rights.

The meeting rose at 5.45 p.m.